



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 4845-99
21 June 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability.

2. The Board, consisting of Mr. Ensley and Mses. Moidel and Taylor, reviewed Petitioner's allegations of error and injustice on 18 May 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although, it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 23 July 1990. Petitioner was evaluated by a psychologist on 1 April 1992. Psychological testing supported his complaints of feeling withdrawn, anxious, irritable and having difficulty coping. He was given diagnoses of alcohol abuse; other specified family circumstances; and personality disorder, not otherwise specified, with dependent, avoidant and self-defeating features. He was honorably discharged by reason of the personality disorder on 7 May 1992. On 11 October 1993, he was seen at UCLA Medical Center for "pre-symptomatic Huntington's disease which is present in his family." Studies suggested that his deceased mother had the disease, as did his father and brother. Petitioner claimed to be asymptomatic, but the neurologist who examined

him noted multiple tics of the hands, fingers, and legs, as well as some jerkiness when he attempted to shake hands. His condition was diagnosed as Huntington's disease. Petitioner reportedly noted the onset of symptoms of that disorder in mid-1995. On 22 May 1998, the Department of Veterans Affairs (VA) awarded him a 10% rating for Huntington's disease from 24 November 1997. The VA determined that the psychiatric complaints Petitioner experienced in the Navy were early symptoms of Huntington's disease, and that although that disease is hereditary, the condition was classified as "permanently worsened as a result of service" because its symptoms were not manifested until he had been on active duty for about one year and nine months. The rating was increased to 100% effective 8 January 1999.

d. SECNAVINST 1850.4C, the Disability Evaluation Manual, paragraph 2106, provided, in effect, that hereditary conditions are presumed to have originated prior to entry into the military service. Paragraph 2076 provided, in effect, that a condition which was not incurred or aggravated while the service member was entitled to basic pay is not ratable by the Department of the Navy.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the findings made by the Department of Veterans Affairs in this case, and after resolving doubt in Petitioner's favor, the Board concludes that the psychiatric complaints which resulted in his discharge by reason of a personality disorder could have been caused by the early effects of Huntington's disease. As noted above, however, the condition is hereditary in nature and presumed to have existed prior to his entry into the Navy. As such, it is not ratable absent a determination that the condition was aggravated by his service. The Board was unable to conclude that the relatively mild symptoms he experienced while on active duty represented an increase in severity of the condition beyond its natural progression.

The Board noted that even if it were to assume, for the sake of argument, that Petitioner's condition had been aggravated by service, he could not be accorded effective relief, because the condition would not have been ratable at or above 30%, which is the minimum required to qualify for disability retirement. Although he would have qualified for a small severance payment, the amount received would be offset against his VA compensation, and there would be no net monetary gain.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:


a. That Petitioner's naval record be corrected to show that he was discharged by reason of physical disability on 7 May 1992, without entitlement to disability severance pay, due to Huntington's disease, which existed prior to his entry on active duty, and was not aggravated by his naval service.

b. That so much of his request for corrective action as exceeds the foregoing be denied.

c. That a copy of the Board's action be filed in his naval record.

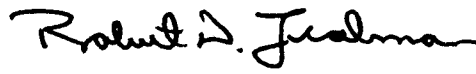
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



for W. DEAN PFEIFFER
Executive Director